In the High Court of Judicature at Madras

Dated:07.08.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. MANIKUMAR

Habeas Corpus Petition No.470 of 2006

Banumathi .. Petitioner

vs.

1. The Secretary to Government
   Prohibition & Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus call for the records relating to the Detention order No.96/2006 dated 4.4.2006 passed by the second respondent and set aside the same and direct the respondent to produce the body of the detenu Palani, Son of Dhansingh, aged about 40 years detenu now confined in Central Prison, Chennai before this Hon'ble Court and set him at liberty forthwith.

For petitioner : Mr. A.S. Bilal

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The petitioner by name Banumathi, challenges the impugned order of detention dated 04.04.2006, detaining her husband Palani, as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

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2.Heard both sides.

3. Even at the foremost the learned counsel for the petitioner by drawing our attention to the specific averments made in para 4 of the grounds of detention contended that though the detaining authority has specifically stated that the detenu was remanded to judicial custody in Crime No.111 of 2006 on the file of C2 Elephant Gate Police Station and has moved bail application before the VIII Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.1735 of 2006. It is contended that the same was not furnished to the detenu and secondly the copy furnished to the detenu relates to Crime No.108 of 2006, which is available at page 143 of the paper book supplied to the detenu. Based on this learned counsel submitted that the said aspect shows non-application of mind on the part of the detaining authority and also failed to supply material document to the detenu, which vitiates the ultimate impugned detention order passed by him.

4. In the light of the above submission, we verified para 4 of the grounds of detention. As rightly pointed out, in that paragraph the detaining authority has made a reference to Crime No. 111 of 2006 on the file of C2 Elephant Gate Police Station and also further reference to filing of bail application before VIII Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.1735 of 2006. Though the said crime number relates to grounds case, the copy of the bail petition supplied to the detenu, which is available at page 143 and 145 of the paper book relate to Crime No.108 of 2006, which relates to third adverse case. In fact, the detenu was not supplied with relevant materials with regard to bail application in respect of Crime No.111 of 2006. We are also satisfied that this material aspect was not noted by the detaining authority. In addition to the same, it is relevant to mention that in the special report though the sponsoring authority has informed the detaining authority relating to arrest of the detenu and filing of bail petition in Crime No.111 of 2006 (which relates to ground case), in the absence of copy of the said bail petition, the detaining authority has to get clarification from the sponsoring authority. In the absence of such request or clarification, as rightly pointed out by the learned counsel for the petitioner, the detaining authority has not applied his mind before passing the impugned order of detention. On this ground we are satisfied that the impugned detention order is liable to quashed. Accordingly, this petition is allowed. The order of detention impugned in the petition is set aside and the

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detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition & Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008.

3. The Director General of Police
   Chennai 4.

4. The Superintendent
   Central Prison, Chennai.

5. The Public Prosecutor
   High Court, Madras.

6. The Joint Secretary to Government,
   Public (Law and Order) Department,
   Fort St. George, Chennai-9.

1 cc to Mr.A.K.S.Thahir, Advocate, SR.35009

sgl (co)

dv/24.8.06

Order in
H.C.P.No.470 of 2006

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